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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/808,942

03/25/2004

Gerald L. Thompson

7330

6876

7590
Robert D. Touslee
Johns Manville
10100 West Ute Avenue
Littleton, CO 80127

01/16/2007

EXAMINER

BRUENJES, CHRISTOPHER P

ART UNIT

PAPER NUMBER

1772

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
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3 MONTHS

01/16/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/808,942

Applicant(s)

THOMPSON ET AL.

Examiner

Christopher P. Bruenjes

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 October 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 8, 10, 13, 14 and 23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 8, 10, 13, 14 and 23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

WITHDRAWN REJECTIONS

1. The double patenting rejections of claims 1-5 and 8-12 over claim 37 of application number 10/801,734 of record in the Office Action mailed May 10, 2006, Pages 2-3 Paragraph 2, have been withdrawn due to Applicant's amendments in the Paper filed October 5, 2006.

2. The 35 U.S.C. 103 rejections of claims 1-22 of record in the Office Action mailed May 10, 2006, have been withdrawn due to Applicant's amendments in the Paper filed October 5, 2006.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for

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establishing a background for determining obviousness under 35

U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

5. Claims 8, 10, 13-14, and 23 are rejected under 35 U.S.C.

103(a) as being unpatentable over Weinstein et al (US

2001/0030018 A1) in view of Gembala (US 2004/0166087 A1) and

Trabbold et al (US 2004/0163724 A1) and Szwarc (USPN 2,496,566).

Regarding claim 8, Weinstein et al teach glass fiber building insulation assembly comprising a resilient glass fiber insulation blanket having a density of between about 0.4 pounds/ft³ and about 1.5 pounds/ft³ (p.3, paragraph 32), a length of about 46 to about 48 inches, a width of about 15 inches or about 23 inches (p.3, paragraph 34), and a thickness of between about 3 inches and about 10 inches (p.4, paragraph 37), and first and second major surfaces defined by the length and width of the blanket (see claim 1 on page 10). The faced fibrous insulation assembly further comprises a facing comprising a Kraft paper sheet material having a central field portion, in which the central field portion has an outer major surface and an inner major surface for bonding to a major surface of a fibrous

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insulation blanket and is bonded to the fibrous insulation blanket by coating the inner major surface of the central field portion with an asphalt coating layer (p.5, paragraph 43).

Weinstein et al fail to teach the asphalt coating layer containing an odor-reducing additive. However, Gembala teaches that the need for odor reduction and masking in the asphalt compositions is well known in the construction industry (p.1, paragraph 4). Gembala further teaches that essential plant oil odor-reducing additives are added to asphalt in order to reduce and mask the odor of the asphalt composition (p.1, paragraph 7). Gembala also teaches that the fragrance is added in moderate amounts so as to not interfere with the performance or workability of the asphalt (p.1, Paragraph 7). Therefore, it would have been obvious to one having ordinary skill in the art at the time Applicant's invention was made to add an essential plant oil odor-reducing additive to a asphalt used in the art of roofing materials in order to reduce and mask the odor of the asphalt composition, as taught by Gembala, and that the amount of the additive would be optimized based on the amount needed to reduce and mask the odor without interfering with the performance of the asphalt, as taught by Gembala.

Thus, it would have been obvious to one having ordinary skill in the art at the time Applicant's invention was made to

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add an essential plant oil odor-reducing additive in the amount claimed to the asphalt containing sheet material of Voigt et al and Szwarc in order to reduce and mask the odor of the asphalt composition as desired in the construction industry, as taught by Gembala. Furthermore, the amount of the additive would be selected by one having ordinary skill in the art after routine experimentation to determine the optimal amount desired to mask the odor without interfering with the performance or workability of the asphalt, as taught by Gembala.

Weinstein et al and Gembala combined teach all that is shown above and that the glass fibers are bonded together at their points of intersection, but fail to teach using an odorless binder such as acrylic when forming the fibrous insulation blanket. However, Trabbold et al teach that it is known in the art of glass fiber insulation blankets to use a phenolic powder resin containing formaldehyde as a binder to bond together the glass fibers (p.1, paragraph 7). Weinstein et al teach an example of this traditional binder when forming the insulation blanket, but also teach that other suitable bonding materials may be used (p.3, paragraph 32). Trabbold et al goes on to teach that although there is no health risk with the traditional fiber class using formaldehyde containing binders, formaldehyde at higher levels may cause skin irritation and

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sensitivity. Therefore, in consideration of such concerns, manufacturers of insulation products have started to offer formaldehyde-free products to provide the consumers an alternative to the traditional insulation products (p.1, paragraph 7). Trabbold et al teach that the currently used formaldehyde free binder used in glass fiber insulation is an acrylic thermosetting binder (p.1, paragraph 8). Note that acrylic thermosetting binders are inherently substantially odorless. Therefore, one of ordinary skill in the art would have recognized that acrylic thermosetting binders, which are odorless, are substituted for formaldehyde binders in the formation of glass fiber insulation, since consumers are concerned with the skin irritation and sensitivity caused by higher levels of formaldehyde containing binders, as taught by Trabbold et al.

Thus, it would have been obvious to one having ordinary skill in the art at the time Applicant's invention was made to substitute an acrylic thermosetting binder, which is odorless since it is a known formaldehyde free insulation, as taught by Trabbold et al, for the formaldehyde containing binder used in the glass fiber insulation blanket of Weinstein et al, in order to provide a glass fiber insulation blanket that is formaldehyde free, since consumers are concerned about skin irritation and

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sensitivity caused by high levels of formaldehyde, as taught by Trabbold et al.

Weinstein et al, Gembala, and Trabbold et al taken as a whole teach all that is shown above, but fail to teach that the Kraft paper sheet material with the asphalt coating layer is fungi growth resistant. However, Szwarc teaches asphalt used to form water-vapor resistant Kraft paper, such as the Kraft paper sheet of Weinstein et al, contains a fungicide in an amount sufficient to render the sheet material fungi growth resistant (col.1, l.18-20 and col.2, l.6-11). Therefore, it would have been obvious to one having ordinary skill in the art that fungicides are added to asphalt coating used to form water-vapor resistant coated Kraft paper in order to render the paper sheet material fungi growth resistant, as taught by Szwarc.

Thus, it would have been obvious to one having ordinary skill in the art at the time Applicant's invention was made to add a fungicide to the asphalt coating of Weinstein et al and Gembala in order to render the Kraft paper sheet material fungi growth resistant, as taught by Szwarc, since one of ordinary skill in the art recognizes that fungi growth resistance is useful for water vapor resistant coated papers, as suggested by Szwarc.

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Regarding claim 10, Gembala teach that the odor-reducing additive is essential plant oil and the amount of the additive would be selected by one having ordinary skill in the art after routine experimentation to determine the optimal amount desired to mask the odor without interfering with the performance or workability of the asphalt, as taught by Gembala.

Regarding claims 13-14, Weinstein et al teach that the Kraft paper sheet material includes a foil layer, a scrim layer and a Kraft paper layer (p.5, paragraph 43).

Regarding claim 23, Szwarc teaches that the asphalt coated on the Kraft paper is rendered fungi growth-resistant by adding a growth-inhibiting agent as shown above. Therefore, the Kraft paper sheet material containing the growth-inhibiting agent incorporated in the asphalt coating would be fungi growth-resistant Kraft paper sheet material.

Response to Arguments

6. Applicant's arguments regarding the double patenting rejections of record have been considered but are moot since the rejections have been withdrawn.

7. Applicant's arguments regarding the 35 U.S.C. 103 rejections of record have been fully considered and although the

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rejections have all been withdrawn, the references have been used in a new combination above, so the arguments will be answered with regard to the new combination of references.

In response to Applicant's argument that Gembala does not provide motivation to add the odorless binder to facings of building insulation only roofing materials, Gembala teaches in general that odorless binders are added to asphalt compositions to eliminate the noxious fumes created by formaldehyde binders. Roofing and building insulation are analogous arts insofar as both are involved in building construction and repair. Furthermore, roofing and building insulation face similar problems such as using asphalt compositions that are known to present unpleasant odors. Therefore, because the two references are analogous, one having ordinary skill in the art would look to roofing to solve a problem in building insulation especially when the problem entails asphalt compositions.

In response to Applicant's argument that Szwarc fails to teach that a fungicide and odor-reducing agent are both used in an asphalt mixture, Szwarc teaches generally that fungicides are added to asphalt mixtures for water proofing Kraft paper. Because, Weinstein is concerned with forming water proofed Kraft paper by adding an asphalt mixture, one having ordinary skill in the art would look to other asphalt coated Kraft paper when

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looking for improvements to Weinstein. One of ordinary skill in the art would also realize that preventing water from ingress into building insulation is to prevent fungus and mold growth. Therefore, one of ordinary skill in the art would have recognized that adding a fungicide to the asphalt coated Kraft paper as taught in Szwarc would increase the prevention of fungus and mold growth in the building insulation.

In response to Applicant's argument that Trabbold fails to teach all of the elements of the claimed invention missing in Weinstein, the four references must be taken as a whole for what they teach.

Conclusion

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened

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statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher P. Bruenjes whose telephone number is 571-272-1489. The examiner can normally be reached on Monday thru Friday from 8:00am-4:30pm.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on 571-272-1498. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Christopher P Bruenjes
Examiner
Art Unit 1772

CPB
CPB
January 8, 2007


ALICIA CHEVALIER
PRIMARY EXAMINER